

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ELVA GARZA-GRANT,

Plaintiff,

v.

CAROLYN W. COLVIN,  
Commissioner of Social Security,

Defendant.

No. 1:14-CV-03018-JTR

ORDER GRANTING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

**BEFORE THE COURT** are cross-Motions for Summary Judgment. ECF No. 23, 25. Attorney D. James Tree represents Elva Garza-Grant (Plaintiff); Special Assistant United States Attorney Franco L. Becia represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 35. After reviewing the administrative record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

**JURISDICTION**

Plaintiff filed applications for Supplemental Security Income (SSI) and Disabled Widows Benefits (DWB) on April 22, 2009, Tr. 345-349, alleging disability since October 23, 2008, due to Post-Traumatic Stress Disorder (PTSD),

1 Depression, and Epilepsy. Tr. 364. The applications were denied initially and  
2 upon reconsideration. Tr. 185-192, 198-201. Administrative Law Judge (ALJ)  
3 Donna Ships held hearings on April 12, 2011, and June 3, 2011. Tr. 162. A  
4 decision denying Plaintiff's application for benefits was rendered on July 14, 2011.  
5 Tr. 159-179. The Appeals Council remanded ALJ Ships' decision on May 30,  
6 2012. Tr. 180-184. ALJ Tom L. Morris held a hearing on January 22, 2013, at  
7 which Plaintiff, represented by counsel, and vocational expert (VE) Paul Prachyl  
8 testified. ALJ Morris issued an unfavorable decision on March 6, 2013. Tr. 16-43.  
9 The Appeals Council denied review on December 17, 2013. Tr. 1-7. The March  
10 6, 2013, decision became the final decision of the Commissioner, which is  
11 appealable to the district court pursuant to 42 U.S.C. § 405(g). Plaintiff filed this  
12 action for judicial review on February 13, 2014. ECF No. 1, 6.

### 13 **STATEMENT OF FACTS**

14 The facts of the case are set forth in the administrative hearing transcript, the  
15 ALJ's decision, and the briefs of the parties. They are only briefly summarized  
16 here.

17 Plaintiff was 50 years old at the alleged onset date. Tr. 345. Plaintiff  
18 completed high school in 1978. Tr. 104, 369. At the administrative hearing,  
19 Plaintiff described mental impairments, chronic pneumonia, and kidney problems.  
20 Tr. 114-115, 129. She testified that the impairments caused anxiety, audio  
21 hallucinations, depression, difficulty sleeping, nightmares, and urinary  
22 incontinence. Tr. 117-118, 123, 129-131. Additionally, Plaintiff testified to a  
23 history of drug use, including multiple relapses, Methadone treatment, and  
24 falsifying urine screenings. Tr. 120-122.

### 25 **STANDARD OF REVIEW**

26 The ALJ is responsible for determining credibility, resolving conflicts in  
27 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
28 1039 (9th Cir. 1995). The Court reviews the ALJ's determinations of law de novo,

deferring to a reasonable interpretation of the statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is not supported by substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational interpretation, the court may not substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097. Nevertheless, a decision supported by substantial evidence will still be set aside if the proper legal standards were not applied in weighing the evidence and making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence supports the administrative findings, or if conflicting evidence supports a finding of either disability or non-disability, the ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

### SEQUENTIAL EVALUATION PROCESS

The Commissioner has established a five-step sequential evaluation process for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a), 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of proof rests upon claimants to establish a prima facie case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once claimants establish that physical or mental impairments prevent them from engaging in their previous occupations. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). If claimants cannot do their past relevant work, the ALJ proceeds to step five, and the burden shifts to the Commissioner to show that (1) the claimants can make an adjustment to other work, and (2) specific jobs exist in the national economy which claimants can perform. *Batson v. Comm'r of Soc. Sec.*

1 *Admin.*, 359 F.3d 1190, 1193-1194 (2004). If claimants cannot make an  
 2 adjustment to other work in the national economy, a finding of “disabled” is made.  
 3 20 C.F.R. §§ 404.1520(a)(v), 416.920(a)(4)(v).

#### 4 **ADMINISTRATIVE DECISION**

5 On March 6, 2013, the ALJ issued a decision finding Plaintiff was not  
 6 disabled as defined in the Social Security Act.

7 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
 8 activity since October 23, 2008, the alleged date of onset. Tr. 21.

9 At step two, the ALJ determined Plaintiff had the following severe  
 10 impairments: major depression and generalized anxiety disorder. Tr. 22.

11 At step three, the ALJ found Plaintiff did not have an impairment or  
 12 combination of impairments that met or medically equaled the severity of one of  
 13 the listed impairments. Tr. 24.

14 At step four, the ALJ assessed Plaintiff’s residual function capacity (RFC)  
 15 and determined she could perform a full range of work at all exertional levels but  
 16 had the following nonexertional limitations:

17  
 18 [T]he claimant can perform simple and routine tasks; can have  
 19 occasional contact with coworkers; can have occasional contact with  
 20 the public for work related tasks given that each occurrence should be  
 21 no more than an average of 15 minutes in duration though incidental  
 22 contact with the public is not precluded; must avoid concentrated  
 exposure to hazards (dangerous machinery, unprotected heights, etc.),  
 and can occasionally climb ladder, ropes, and scaffolds.

23  
 24 Tr. 25. The ALJ concluded Plaintiff had no past relevant work. Tr. 35.

25 At step five, the ALJ determined that, considering Plaintiff’s age, education,  
 26 work experience and RFC, and based on the testimony of the vocational expert,  
 27 there were other jobs that exist in significant numbers in the national economy  
 28 Plaintiff could perform, including the jobs of hand packager, industrial cleaner,

1 inspector/hand packager, small products assembler II, final assembler, and  
 2 document preparer. Tr. 36. The ALJ thus concluded Plaintiff was not under a  
 3 disability within the meaning of the Social Security Act at any time from October  
 4 23, 2008, through the date of the ALJ's decision, March 6, 2013. Tr. 36.

## 5 ISSUES

6 The question presented is whether substantial evidence supports the ALJ's  
 7 decision denying benefits and, if so, whether that decision is based on proper legal  
 8 standards. Plaintiff contends the ALJ erred by (1) failing to properly consider  
 9 Plaintiff's testimony about the severity of her symptoms; (2) failing to give proper  
 10 weight to the opinion of treating psychologist Dr. Rodenberger; (3) failing to find  
 11 PTSD severe at step two; (4) failing to form an accurate RFC including limitations  
 12 from all impairments; and (5) failing to accurately represent VE Prachyl's opinion  
 13 in the decision.

## 14 DISCUSSION

### 15 A. Credibility

16 The ALJ concluded that Plaintiff's "statements concerning the intensity,  
 17 persistence and limiting effects of [her] symptoms are not credible," for three  
 18 reasons: (1) the medical record failed to support Plaintiff's mental symptoms and  
 19 the limitations to the degree alleged; (2) Plaintiff engaged in activities showing  
 20 greater mental functioning ability than alleged; and (3) Plaintiff made inconsistent  
 21 statements regarding her substance use. Tr. 26-32.

22 It is generally the province of the ALJ to make credibility determinations,  
 23 *Andrews*, 53 F.3d at 1039, but the ALJ's findings must be supported by specific  
 24 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent  
 25 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's  
 26 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d  
 27 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).  
 28 "General findings are insufficient: rather the ALJ must identify what testimony is

1 not credible and what evidence undermines the claimant's complaints." *Lester*, 81  
2 F.3d at 834.

3 Plaintiff limits her argument to the second reason the ALJ found her less  
4 than fully credible: that she engaged in activities showing greater mental  
5 functioning ability than alleged. ECF No. 23 at 20-22.

6 A claimant's daily activities may support an adverse credibility finding if (1)  
7 the claimant's activities contradict her other testimony, or (2) "the claimant is able  
8 to spend a substantial part of [her] day engaged in pursuits involving performance  
9 of physical functions that are transferable to a work setting." *Orn v. Astrue*, 495  
10 F.3d 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir.  
11 1989)). "Where, as here, the ALJ has made specific findings justifying a decision  
12 to disbelieve an allegation . . . and those findings are supported by substantial  
13 evidence in the record, our role is not to second-guess that decision." *Morgan v.*  
14 *Commissioner of the Social Security Admin.*, 169 F.3d 595, 599 (9th Cir. 1989)  
15 (citing *Fair*, 885 F.2d at 603).

16 In this case, the ALJ concluded that Plaintiff's activities contradicted her  
17 statements regarding the severity of her mental health symptoms. Tr. 29-30. The  
18 ALJ specifically addressed Plaintiff's activities of attending school; attending  
19 support groups; attending church; traveling to see family; caring for her mother,  
20 aunt, and grandchildren; and forming a new romantic relationship contradicted her  
21 statements regarding her ability to interact with others/social functioning,  
22 sustaining concentration and attention, and performing daily activities. Tr. 30-31.

23 Plaintiff contends that none of the activities mentioned by the ALJ actually  
24 contradict Plaintiff's alleged symptoms. ECF No. 23 at 21. If the evidence is  
25 susceptible to more than one rational interpretation, the court may not substitute its  
26 judgment for that of the ALJ. *Tackett*, 180 F.3d at 1098. Because the ALJ cites to  
27 specific evidence that supports his conclusion, the Court will not second-guess his  
28 findings. Therefore, the ALJ provided a "specific, clear and convincing" reason to

1 find Plaintiff less than fully credible.

2 The ALJ provided two additional reasons for his unfavorable credibility  
3 determination. Plaintiff did not challenge these remaining two reasons. The court  
4 will not consider matters on appeal that are not specifically and distinctly argued in  
5 a plaintiff's opening brief. *Carmickle v. Comm'r Soc. Sec. Admin.*, 533 F.3d  
6 1155, 1161 n.2 (9th Cir. 2008). Therefore, even if the ALJ's reliance on Plaintiff's  
7 activities was supported by substantial evidence and not considered a "specific,  
8 clear and convincing" reason, there are two additional reasons that are sufficient to  
9 find Plaintiff less than fully credible. *See Carmickle*, 533 F.3d at 1163 (upholding  
10 adverse credibility finding where ALJ provided four reasons to discredit claimant,  
11 two of which were invalid); *Batson*, 359 F.3d at 1197 (affirming credibility finding  
12 where one of several reasons was unsupported by the record).

13 The Court finds the ALJ's credibility finding is supported by substantial  
14 evidence.

15 **B. Philip Rodenberger, M.D.**

16 Plaintiff argues the ALJ failed to properly consider and weigh the medical  
17 opinion expressed by treating psychiatrist Dr. Rodenberger. ECF No. 23 at 13-16.

18 In weighing medical source opinions, the ALJ should distinguish between  
19 three different types of physicians: (1) treating physicians, who actually treat the  
20 claimant; (2) examining physicians, who examine but do not treat the claimant;  
21 and, (3) nonexamining physicians who neither treat nor examine the claimant.  
22 *Lester*, 81 F.3d at 830. The ALJ should give more weight to the opinion of a  
23 treating physician than to the opinion of an examining physician. *Orn*, 495 F.3d at  
24 631. Likewise, the ALJ should give more weight to the opinion of an examining  
25 physician than to the opinion of a nonexamining physician. *Id.*

26 When a treating physician's opinion is not contradicted by another  
27 physician, the ALJ may reject the opinion only for "clear and convincing" reasons.  
28 *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991). When a treating



1 physician's opinion is contradicted by another physician, the ALJ is only required  
2 to provide "specific and legitimate reasons" for rejecting the opinion of the treating  
3 physician. *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983).

4 The ALJ gave Dr. Rodenberger's January 14, 2010, opinion "little weight"  
5 for three reasons: (1) he failed to provide any rationale or reference any objective  
6 evidence in support of his findings; (2) his opinion was inconsistent with his  
7 examination findings of mild to moderate GAF scores; and (3) his assessment was  
8 inconsistent with the totality of the evidence. Tr. 32.

9 Defendant asserted that "specific and legitimate" is the necessary standard in  
10 this case. ECF No. 25 at 13-15. Plaintiff does not challenge this assertion. ECF  
11 No. 23, 29.

12 Plaintiff contends a psychiatrist does not need to provide objective evidence  
13 in assessing a patient's mental health impairment. ECF No. 23 at 13-15; ECF No.  
14 29 at 2-3. As support, Plaintiff notes that "[n]o laboratory tests or physical  
15 examinations exist, or are even known to be possible, to diagnose some  
16 psychological disorders. And the practice of psychologists often consists entirely  
17 of professional assessment of patient-reported symptoms and experiences."  
18 *Vanieken-Ryals v. Office of Pers. Mgmt.*, 508 F.3d 1034, 1041-1042 (Fed. Cir.  
19 2007).

20 The Court acknowledges that the diagnosis of many social and  
21 psychological limitations will depend on a physician's analysis of a patient's self-  
22 reported symptoms. But, here the ALJ's reason for rejecting Dr. Rodenberger's  
23 opinion is that he failed to provide "*any rationale* or reference to any objective  
24 evidence." Tr. 32 (emphasis added). A review of Dr. Rodenberger's January 14,  
25 2010, opinion shows that he checked the appropriate box to represent his opinion,  
26 signed the form, and left the "Comments" section blank. Tr. 516-518. The  
27 document containing the opinion does not provide any notation indicating a  
28 reliance on Plaintiff's self-reports or objective evidence. The ALJ may



1 “permissibly reject[ ] . . . check-off reports that [do] not contain any explanation  
2 of the bases of their conclusions.” *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir.  
3 1996). Therefore, the ALJ’s rejection of this opinion for lack of rationale or  
4 supporting evidence meets the “specific and legitimate” standard.

5 Plaintiff asserts that the September 8, 2010, letter to Swedish Hospital  
6 Neurology and the January 7, 2011, medication update record is rationale for Dr.  
7 Rodenberger’s opinion and asks the Court to review the record as a whole. ECF  
8 No. 23 at 15. However, the letter and the treatment notes are dated several months  
9 after Dr. Rodenberger’s January 2010 opinion. Therefore, they cannot be relied  
10 upon as rationale for Dr. Rodenberger’s opinion of Plaintiff’s functional ability in  
11 January of 2010.

12 Furthermore, a review of the records shows there was substantial evidence  
13 for the ALJ to conclude that Dr. Rodenberger’s opinion was not supported by his  
14 treatment notes: In February 2009, Plaintiff is doing well and is transferred back to  
15 her primary care provider, Tr. 644; in December of 2009, Plaintiff “seems to be  
16 sustaining the status quo,” Tr. 1067; in April of 2010, despite new physical  
17 diagnoses, Plaintiff’s mental health “has not significantly worsened,” Tr. 1066; and  
18 in September of 2010, Plaintiff is unable to successfully repeat an unfamiliar name  
19 and address after four trials, Tr. 1065, but by December of 2010, she improves at  
20 the repeating an unfamiliar name test and Dr. Rodenberger concludes that Plaintiff  
21 seems calmer and less anxious.<sup>1</sup> Tr. 1329. Besides the September 2010 repeating  
22 an unfamiliar name test, Dr. Rodenberger’s records consistently state that there is  
23 no impairment of memory or intellectual functioning. Tr. 644-645, 649, 1066.

24 Here, Plaintiff appears to assert that the evidence supports Dr.

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25  
26 <sup>1</sup>The ALJ questions Plaintiff’s sobriety at this time, noting that she has  
27 inconsistent statements regarding drug use in September through October of 2010.  
28 Tr. 31.

1 Rodenberger's opinion and the ALJ concludes that it does not. The Court finds  
2 that while there is evidence in the record that could be interpreted more favorable  
3 to the Plaintiff, when the evidence is susceptible to more than one rational  
4 interpretation, the Court will not disturb the ALJ's opinion. *Tackett*, 180 F.3d at  
5 1097.

6 The ALJ provided two additional reasons he gave Dr. Rodenberger's  
7 opinion "little weight": (1) his opinion was inconsistent with his examination  
8 findings of mild to moderate GAF scores, and (2) his assessment was inconsistent  
9 with the totality of the evidence. Tr. 32. Plaintiff failed to provide specific  
10 arguments in her initial briefing to address these remaining two reasons. She  
11 neither cites to evidence or legal authority, nor explains specifically how and why  
12 the ALJ erred. The court ordinarily will not consider matters on appeal that are not  
13 specifically and distinctly argued in an appellant's opening brief. *Carmickle*, 533  
14 F.3d at 1161 n.2. The Ninth Circuit explained the necessity for providing specific  
15 argument:

16  
17 The art of advocacy is not one of mystery. Our adversarial system relies  
18 on the advocates to inform the discussion and raise the issues to the  
19 court. Particularly on appeal, we have held firm against considering  
20 arguments that are not briefed. But the term "brief" in the appellate  
21 context does not mean opaque nor is it an exercise in issue spotting.  
22 However much we may importune lawyers to be brief and to get to the  
23 point, we have never suggested that they skip the substance of their  
24 argument in order to do so. It is no accident that the Federal Rules of  
25 Appellate Procedure require the opening brief to contain the  
26 "appellant's contentions and the reasons for them, with citations to the  
27 authorities and parts of the record on which the appellant relies." Fed.  
28 R. App. P. 28(a)(9)(A). We require contentions to be accompanied by  
reasons.

26 *Independent Towers of Wash. v. Wash.*, 350 F.3d 925, 929 (9th Cir. 2003).

27 Moreover, the Ninth Circuit has repeatedly admonished that the court will not  
28 "manufacture arguments for an appellant" and therefore will not consider claims

1 that were not actually argued in appellant's opening brief. *Greenwood v. Fed.*  
2 *Aviation Admin.*, 28 F.3d 971, 977 (9th Cir. 1994). Because Plaintiff failed to  
3 provide adequate briefing, the Court declines to consider the remaining two  
4 reasons.

5 In conclusion, the Court finds that the ALJ's did not err in assigning little  
6 weight to the opinion of Dr. Rodenberger.

### 7 **C. PTSD**

8 Plaintiff appears to assert that the ALJ erred by not finding PTSD a severe  
9 impairment at step two. ECF No. 23 at 25-35.

10 The step-two analysis is "a de minimis screening device used to dispose of  
11 groundless claims." *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005). An  
12 impairment is "not severe" if it does not "significantly limit" the ability to conduct  
13 "basic work activities." 20 C.F.R. §§ 404.1521(a), 416.921(a). Basic work  
14 activities are "abilities and aptitudes necessary to do most jobs." 20 C.F.R. §§  
15 404.1521(b), 416.921(b). "An impairment or combination of impairments can be  
16 found not severe only if the evidence establishes a slight abnormality that has no  
17 more than a minimal effect on an individual's ability to work." *Smolen*, 80 F.3d at  
18 1279 (internal quotation marks omitted). A claimant's own statement of symptoms  
19 alone will not suffice. *See* 20 C.F.R. §§ 404.1508, 416.908.

20 The ALJ did not address the diagnosis of PTSD directly in his step two  
21 analysis. Tr. 22-24. Throughout the decision, the ALJ assigned weight to the  
22 different providers who treated Plaintiff and provided their opinions. Tr. 32-35.  
23 The ALJ gave "significant weight" to the opinions of Jerry Gardner, Ph.D., and  
24 John F. Robinson, Ph.D. Tr. 32. Neither of these psychologists determined that  
25 PTSD was a medically determinable impairment: Dr. Gardner opined that the  
26 record supported the medically determinable impairments of generalized anxiety  
27 disorder, major depression, and a history of heroin abuse, Tr. 479-491, and Dr.  
28 Robinson agreed with Dr. Gardner's conclusions. Tr. 512. Plaintiff does not

1 contest the ALJ assigning these psychologists great weight. Suzanne Rodriguez,  
2 MSW, treated Plaintiff for PTSD in 2008 and 2009. Tr. 445-450, 506-511, 606-  
3 607, 740-741, 756. In November of 2008, Ms. Rodriguez prepared an opinion  
4 which states that Plaintiff has no cognitive disorders and only mild social  
5 limitations. Tr. 436. The ALJ gave “significant weight” to Ms. Rodriguez’s  
6 opinion, and Plaintiff does not contest this determination. Tr. 34.

7 The ALJ gave either little or limited weight to the opinions of medical  
8 professionals who did diagnose Plaintiff with PTSD: Dr. Rodenberger diagnosed  
9 Plaintiff with PTSD and provided several marked mental health impairments in his  
10 opinion. Tr. 516-518, 1065-1067, 1329. The ALJ gave Dr. Rodenberger’s opinion  
11 little weight. Tr. 32. Dr. David Deutsch reviewed Plaintiff’s application for GAX  
12 on October 29, 2009. He included a diagnosis of PTSD but opined that there was  
13 insufficient evidence to make a disability determination due to there being no  
14 neurological workup in the file. Tr. 801. The ALJ gave Dr. Deutsch’s opinion  
15 only “some weight.” Tr. 33. Kent Layton, Psy.D., testified at Plaintiff’s initial  
16 hearing in April of 2011. He concluded that the diagnosis of PTSD was severe, but  
17 clarified that when Plaintiff was sober, the PTSD did not cause any limitation to  
18 competitive work. Tr. 51-57. The ALJ gave Dr. Layton’s testimony “some  
19 weight.” Tr. 33. Russell Anderson, L.C.S.W., included a diagnosis of PTSD in his  
20 November 18, 2010, evaluation and opined Plaintiff had several moderate and  
21 marked limitations resulting from her mental health impairments. Tr. 1073, 1075-  
22 1077. The ALJ gave Mr. Anderson’s opinion “less weight.” Tr. 33. Christopher  
23 Clark, M.Ed., LMHC, included a diagnosis of PTSD in his December 15, 2008,  
24 and August 16, 2010, evaluations and concluded that Plaintiff had some moderate  
25 and marked limitations as a result of her mental health impairments. Tr. 438-441,  
26 789-794. The ALJ gave Mr. Clark’s opinion “little weight.” Tr. 34. Gabriela  
27 Mondragon, M.S.W., included a diagnosis of PTSD in her May 18, 2009, and  
28 October 26, 2009, opinions and concluded that the Plaintiff had several moderate

1 and marked limitations as a result of her mental health impairments. Tr. 699-704,  
2 715-718. The ALJ gave her opinion “less weight.” Tr. 34. Peggy Champoux,  
3 M.S.W., included a diagnosis of PTSD in her August 2, 2011, opinion and  
4 concluded that the Plaintiff has some moderate and marked limitations as a result  
5 of her mental health impairments. Tr. 1361-1363. The ALJ gave part of Ms.  
6 Champoux’s opinion “some weight” and gave the remainder of the opinion “little  
7 weight.” Tr. 34.

8 As addressed above, the ALJ’s reasons for rejecting Dr. Rodenberger’s  
9 opinion were legally sufficient and supported by substantial evidence. Plaintiff  
10 does not raise a single objection to the weight given the remaining opinions that  
11 included the diagnosis of PTSD. ECF No. 23. *Carmickle*, 533 F.3d at 1161 n.2.  
12 (failure to challenge in opening brief waives issue).

13 While the ALJ did not state that he found PTSD nonsevere at step two, he  
14 did summarize and discuss the evidence from providers who diagnosed Plaintiff  
15 with PTSD. The Court may draw “specific and legitimate inferences from the  
16 ALJ’s opinion.” *Magallanes v. Bowne*, 881 F.2d 747, 755 (9th Cir. 1989). Here,  
17 the inference is that the ALJ determined the impairment of PTSD was not severe  
18 because the ALJ gave little weight to the opinions that concluded PTSD resulted in  
19 workplace limitations. The ALJ is not required to accept every impairment  
20 asserted by Plaintiff.

21 The ALJ is responsible for determining credibility, resolving conflicts in  
22 medical testimony, and resolving ambiguities. *Andrews*, 53 F.3d at 1039. If the  
23 evidence is susceptible to more than one rational interpretation, the court may not  
24 substitute its judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097. Here, the  
25 Court can infer that the ALJ found the PTSD non severe at step two from the  
26 ALJ’s treatment of medical opinions in the record. Plaintiff does not challenge the  
27 ALJ’s findings as to the weight provided to these opinions, making it a verity on  
28 appeal. Therefore, the record contains substantial evidence to support the ALJ’s

determination.

The Court finds the ALJ did not error at his step two determination.

#### **D. RFC**

Plaintiff argues the ALJ failed to form an accurate RFC by (1) failing to consider all of her impairments by leaving out PTSD, seizure disorder, chronic bronchitis, and urinary tract infection/hydronephrosis; and (2) underestimating the extent of her functional limitations. ECF No. 23 at 16-20; 22-24.

A claimant's RFC is "the most [a claimant] can still do despite [her] limitations." 20 C.F.R. § 416.945(a); *see also* 20 C.F.R. Part 404, Subpart P, Appendix 2, § 200.00(c) (defining RFC as the "maximum degree to which the individual retains the capacity for sustained performance of the physical-mental requirements of jobs."). In formulating a RFC, the ALJ weighs medical and other source opinions and also considers the claimant's credibility and ability to perform daily activities. *See, e.g., Bray v. Comm'r, Soc. Sec. Admin.*, 554 F.3d 1219, 1226 (9th Cir. 2009). In forming an RFC, the ALJ must consider "limitations and restrictions imposed by all of an individual's impairments" including both those considered severe and not severe at step two. S.S.R. 96-8p.<sup>2</sup>

#### **1. Consideration of all impairments**

##### **a. PTSD**

Plaintiff cites to Dr. Rodenberger's opinion to support her assertion that

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<sup>2</sup>Social Security Rulings "represent precedent final opinions and orders and statements of policy and interpretations that we have adopted." 20 C.F.R. § 402.35(b)(1). Social Security Rulings are "binding on all components of the Social Security Administration." *Heckler v. Edwards*, 465 U.S. 870, 873 n.3, 104 S.Ct. 1532, 79 L.Ed.2d 878 (1984); *cf. Silveira v. Apfel*, 204 F.3d 1257, 1260 (9th Cir. 2000) ("This court defer[s] to Social Security Rulings . . . unless they are plainly erroneous or inconsistent with the Act or regulations.").



1 PTSD resulted in limitations not addressed in the RFC. ECF No. 23 at 16, 19.  
2 However, this argument is based solely upon the assumption that the ALJ  
3 improperly rejected Dr. Rodenberger's opinion that Plaintiff had multiple moderate  
4 and marked limitations from her mental health impairments. The ALJ's reasons  
5 for rejecting Dr. Rodenberger's opinion were legally sufficient and supported by  
6 substantial evidence. *See supra*.

7 Furthermore, Plaintiff failed to assert what limitations are the result of PTSD  
8 that the ALJ did not include in the RFC. The Court cannot assess whether the  
9 record supports limitations that were not identified by Plaintiff. Plaintiff bears the  
10 burden of establishing disability at steps one through four. *Tackett*, 180 F.3d 1094  
11 at 1098. By failing to address specific limitations resulting from the asserted  
12 impairment of PTSD, Plaintiff fails to meet her burden.

13 **b. Seizure Disorder**

14 Plaintiff asserts that the ALJ failed to consider her seizure disorder in his  
15 RFC analysis. ECF No. 23 at 19. This is an inaccurate assertion. The ALJ did  
16 consider Plaintiff's seizure disorder in his RFC. He specifically states "I have  
17 taken the pseudo-seizures into account by adding seizure precautions in the  
18 claimant's residual functional capacity assessment." Tr. 23. The ALJ included the  
19 nonsevere impairment of the seizure disorder in the RFC, therefore the ALJ did not  
20 error.

21 Additionally, Plaintiff failed to assert what limitations are the result of  
22 Seizure Disorder that the ALJ did not include in the RFC. Again, the Court cannot  
23 assume limitations not asserted by Plaintiff.

24 **c. Chronic Bronchitis and Urinary tract infection/  
25 hydronephrosis**

26 Plaintiff cites the opinion of Karen Campbell, ARNP, in support of her  
27 assertion that the chronic bronchitis and the hydronephrosis resulted in limitations  
28 not addressed in the RFC. ECF No. 23 at 20. The ALJ gave Nurse Campbell's



1 opinion little weight. Tr. 22. Plaintiff does not contest the weight given to Nurse  
2 Campbell's opinion.

3 Once again, Plaintiff's brief is void of any assertion as to what limitations  
4 resulted from chronic bronchitis and hydronephrosis. The Court again refuses to  
5 address unidentified limitations. *Carmickle*, 533 F.3d at 1161 n.2. (failure to  
6 challenge in opening brief waives issue).

7 Thus, the ALJ did not err in formulating the RFC determination in this case.

## 8 **2. Underestimating the limitations**

9 Plaintiff asserts that the ALJ erred by underestimating the extent of her  
10 functional limitations in compiling the RFC. Tr. 23 at 22-24. This argument is  
11 based upon the assumptions that the ALJ improperly rejected Dr. Rodenberger's  
12 opinion and improperly assessed Plaintiff's credibility. *Id.* at 23-24. As discussed  
13 in detail above, the ALJ's reasons for rejecting Dr. Rodenberger's opinion and  
14 Plaintiff's testimony were legally sufficient and supported by substantial evidence.  
15 Therefore, the Court finds no error with respect to the ALJ's determination  
16 regarding the mental limitations in the RFC. *See Tackett*, 180 F.3d at 1097 (The  
17 decision of the ALJ may be reversed only if it is not supported by substantial  
18 evidence or if it is based on legal error).

## 19 **3. Conclusion**

20 The Court finds the ALJ's RFC determination is supported by substantial  
21 evidence and free of legal error.

## 22 **E. VE Opinion**

23 Plaintiff alleges the ALJ failed to "take into account the opinion of VE  
24 Prachyl that indicated that Claimant could not sustain gainful employment," under  
25 the "ISSUES" section of her Motion for Summary Judgment. ECF No. 23 at 12.  
26 The remainder of Plaintiff's Motion fails to provide a specific argument that  
27 includes a reference to the record or to case law, and she fails to explain  
28 specifically how and why the ALJ erred.

1 As stated throughout this order, the Court ordinarily will not consider  
2 matters on appeal that are not specifically and distinctly argued in an appellant's  
3 opening brief. *Carmickle*, 533 F.3d at 1161 n.2. The court will not "manufacture  
4 arguments for an appellant" and therefore will not consider claims that were not  
5 actually argued in appellant's opening brief. *Greenwood*, 28 F.3d at 977. Because  
6 Plaintiff failed to provide adequate briefing on this issue, the court declines to  
7 consider it.

### 8 CONCLUSION

9 Having reviewed the record and the ALJ's findings, the Court finds the  
10 ALJ's decision is supported by substantial evidence and free of legal error.

11 Accordingly, **IT IS ORDERED:**

12 1. Defendant's Motion for Summary Judgment, **ECF No. 25**, is  
13 **GRANTED**.

14 2. Plaintiff's Motion for Summary Judgment, **ECF No. 23**, is **DENIED**.

15 The District Court Executive is directed to file this Order and provide a copy  
16 to counsel for Plaintiff and Defendant. **Judgment shall be entered for Defendant**  
17 **and the file shall be CLOSED**.

18 DATED November 3, 2015.



A handwritten signature in black ink, appearing to be "M", is written over a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE